

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Inbound EMS 2 (MC2009-10)

Docket No. CP2017-271

ORDER APPROVING CHANGES IN PRICES  
NOT OF GENERAL APPLICABILITY FOR INBOUND EMS 2

(Issued August 30, 2017)

I. INTRODUCTION

The Postal Service requests a change in prices not of general applicability for Inbound EMS 2 effective January 1, 2018.<sup>1</sup> The Commission analyzes the proposed prices pursuant to 39 U.S.C. § 3633. For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

*Product description.* Inbound EMS 2 covers EMS documents and merchandise received from foreign posts for delivery in the Postal Service's domestic delivery area.

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<sup>1</sup> Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, and Application for Non-Public Treatment, August 16, 2017 (Notice).

The Commission approved its addition to the competitive product list in 2008.<sup>2</sup> The Commission has approved seven annual proposed rate changes for Inbound EMS 2, each effective January 1, for the years 2010 through 2016.<sup>3</sup> The Postal Service did not propose price changes to the Inbound EMS 2 product for calendar year (CY) 2017. As a result, the prices that went into effect January 1, 2016 continue to be in effect.

*Instant filing.* The Postal Service's Notice, which proposes to revise the Inbound EMS 2 prices effective January 1, 2018, is the latest in a series of price change proposals that the Postal Service has filed since the product's introduction. The Postal Service requests that the Commission approve the proposed prices within 14 days of the Postal Service filing its Notice.<sup>4</sup>

The Postal Service maintains that the proposed prices are in accordance with the terms of the Governors' Decision Nos. 11-6 and comply with the requirements of 39 U.S.C. § 3633(a)(2). See Notice at 2, 8. In its Notice, the Postal Service proposes a new, simplified two-tiered pricing structure. *Id.* at 3-4. The Postal Service states that

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<sup>2</sup> See Docket Nos. MC2009-10 and CP2009-12, Order Adding Inbound International Expedited Services 2 to Competitive Product List, December 31, 2008 (Order No. 162). Subsequently, the Commission approved the Postal Service's request to change the product name to Inbound EMS 2. See Docket No. CP2013-77, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013 (Order No. 1822).

<sup>3</sup> Docket No. CP2009-57, Order No. 281, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 19, 2009; Docket No. CP2010-90, Order No. 523, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 23, 2010; Docket No. CP2011-66, Order No. 806, Order Approving Changes in Rates for Inbound International Expedited Services 2, August 16, 2011; Docket No. CP2012-52, Order No. 1456, Order Approving Rate Changes for Inbound International Expedited Services 2, August 30, 2012; Docket No. CP2013-77, Order No. 1822; Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013; Docket No. CP2014-58, Order Approving Changes in Rates Not of General Applicability for Inbound EMS 2, August 1, 2014 (Order No. 2140); and Docket No. CP2015-117, Order Approving Changes in Rates Not of General Applicability for Inbound EMS 2, August 12, 2015 (Order No. 2656).

<sup>4</sup> The EMS Cooperative requires each participating destination postal administration to communicate price changes to its partners directly or through the UPU's International Bureau by August 31 of the calendar year before the changes take effect. See Notice at 1, n.1 (citing Order No. 162 at 9). The Postal Service requested that the Commission approve the proposed prices by August 30, "to facilitate the Postal Service's need to provide notice to the [UPU] by August 31 and the time difference at the UPU's European headquarters." *Id.* It is incumbent upon the Postal Service to file its notices in a manner that provides sufficient time for the Postal Service to secure the necessary Commission approval and for the Postal Service to adequately prepare and transmit its UPU notice.

under the new pricing structure, the Postal Service would offer a base price to any foreign postal operator in the EMS Cooperative with which the Postal Service agrees to exchange EMS. *Id.* at 5. This base price would not vary depending on whether the foreign postal operators participate in the EMS Cooperative's Pay-for-Performance (PFP) Plan. *Id.* The second tier would include discounted prices below the base price, which the Postal Service would offer to foreign postal operators on a contractual basis. *Id.* These prices would be subject to a maximum discount. *Id.*; *see id.* Attachment 2.

The Postal Service also requests, beginning January 1, 2018, relief from the requirement that it file quarterly updates, which list all countries whose designated postal operators fall within each applicable tier of Inbound EMS 2 prices. Notice at 8. This requirement is outlined in Order No. 162, which added Inbound EMS 2 to the competitive product list. Order No. 162 at 9. The Postal Service states that the new simplified pricing structure renders these quarterly reports unnecessary. Notice at 6. Additionally, the Postal Service states that because it must file bilateral agreements for discounted Inbound EMS 2 prices with the Commission (and Department of State), the Commission would know which foreign postal operators have entered into such agreements with the Postal Service. *Id.* at 6-7; *citing* 39 U.S.C. § 407(d)(2).

*Initial Commission action.* In Order No. 4051, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>5</sup> Chairman's Information Request No. 1 was issued on August 22, 2017, and requested information to clarify the Postal Service's Notice.<sup>6</sup> The Postal Service responded to CHIR No. 1 on August 28, 2017.<sup>7</sup>

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<sup>5</sup> Notice and Order Concerning Changes in Rates for Inbound EMS 2, August 17, 2017 (Order No. 4051).

<sup>6</sup> Chairman's Information Request No. 1, August 22, 2017.

<sup>7</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, August 28, 2017.

### III. COMMENTS

The Public Representative filed comments on August 25, 2017.<sup>8</sup> No other comments were received. The Public Representative notes that the Postal Service's workpapers did not calculate cost coverage for the proposed Inbound EMS 2 prices based on which countries will pay the base and discounted prices. PR Comments at 2. Rather, she notes that the Postal Service provides the minimum and maximum cost coverage for the Inbound EMS 2 product. *Id.* She concludes that Postal Service's minimum cost coverage calculation, which assumes that all EMS Cooperative members pay the lowest possible discounted price, is "sufficient to demonstrate compliance with 39 U.S.C. § 3633(a)." *Id.* at 3. Based upon her review of all the materials the Postal Service submitted under seal, she recommends that the Commission approve the proposed Inbound EMS 2 prices. *Id.*

The Public Representative also states that because the Postal Service has demonstrated that, even at the lowest possible prices, the Inbound EMS 2 product should cover cost, specific contract information is not necessary to determine compliance. *Id.* at 4. She concludes that the Commission should grant the Postal Service's request for relief from the current reporting requirement. *Id.*

### IV. COMMISSION ANALYSIS

*Proposed Inbound EMS 2 prices.* The Commission reviews price changes for competitive products in accordance with the requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7. These requirements prohibit the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); require each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)); and require

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<sup>8</sup> Public Representative Comments on Postal Service Notice of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, August 25, 2017 (PR Comments). The Public Representative also filed a motion for late acceptance of her comments. Motion of Public Representative for Late Acceptance of Comments, August 28, 2017 (Motion). The Motion is granted.

competitive products as a whole to cover an appropriate share of institutional costs (39 U.S.C. § 3633(a)(3)).

The Commission has reviewed the Notice, supporting documentation, and the Public Representative's comments in light of the requirements in 39 U.S.C. § 3633(a)(1)-(a)(3). As a result of this review, the Commission finds that the prices presented in the Notice should not lead to the subsidization of competitive products by market dominant products; should cover attributable costs; and should have a positive effect on the contribution that competitive products make to institutional costs. Thus, the Commission finds that the planned prices for Inbound EMS 2 satisfy the applicable statutory criteria and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

*Pay-for-Performance penalties.* Under the EMS Cooperative's PFP Plan,<sup>9</sup> the prices that foreign postal operators pay the Postal Service for the delivery of Inbound EMS 2 are subject to potential penalties based on the Postal Service's service performance. In Order No. 2140, the Commission directed the Postal Service to provide an affirmative statement addressing whether the Postal Service incurred PFP penalties in the most recent calendar year for which annual performance results are available with Inbound EMS 2 price changes. Order No. 2140 at 5. In addition, the Commission directed the Postal Service, to the extent feasible, to account for potential PFP penalties, based upon performance results from the Postal Service's most recent annual PFP Report Card.<sup>10</sup> The Commission also directed the Postal Service to explain what its PFP penalty factor reflects and ordered the Postal Service to provide the most recent annual PFP Plan available, along with its most recent annual PFP Report Card

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<sup>9</sup> The EMS Cooperative is a voluntary body of the Universal Postal Union (UPU), comprised of designated postal operators of UPU member countries, that aims to promote cooperation between members to allow them to provide their customers with a high-quality EMS service on a global basis. The EMS Cooperative administers an annual PFP Plan that links payment for EMS delivery to service performance.

<sup>10</sup> *Id.* at 5. The Postal Service receives quarterly and annual Report Cards from the EMS Cooperative on its service performance for Inbound EMS 2.

and all available quarterly PFP Report Cards for the calendar year preceding the effective date of the Inbound EMS 2 prices. *Id.* at 5-6.

In Docket No. CP2015-117, Postal Service provided the most recent annual PFP Plan available, along with its most recent annual PFP Report Card and all available quarterly PFP Report Cards for the calendar year preceding the effective date of the proposed Inbound EMS 2 prices that were the subject of the filing.<sup>11</sup> In the supporting financial workpapers, the Postal Service also provided information on whether or not the Postal Service received PFP penalties in the most recent calendar year for which annual performance results were available. However, the Postal Service did not calculate an estimated PFP penalty in the financial workpapers for the Inbound EMS 2 prices that were the subject of that docket.

In Order No. 2656, the Commission acknowledged that, based on recent performance history, any penalties were likely to be small and should not cause the project cost coverage to fall below 100 percent. Order No. 2656 at 4, n.7. However, the Commission ordered the Postal Service to include in supporting financial models for future Inbound EMS 2 price changes any PFP penalties incurred in the last calendar year for which Report Cards were available, even if the effect on cost coverage was small. *Id.* at 4.

In the instant docket, the Postal Service filed both the most recent PFP Plan (CY 2017) and its most recent annual (CY 2016) and quarterly (CY 2017) report cards. Notice, Attachments 5 and 6. The Postal Service also incorporated a financial penalty in its supporting financial workpapers, but did not provide an explanation of what the penalty reflects, as the Commission directed in Order No. 2140. Based upon its review, and the fact that the Postal Service's financial workpapers reflect a conservative cost coverage estimate by applying the discounted prices to all Inbound EMS 2 volume, the Commission concludes that the failure of the Postal Service to provide an explanation of what the penalty reflects should not prevent compliance with 39 U.S.C. § 3633(a).

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<sup>11</sup> Docket No. CP2015-117, Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, July 31, 2015, at Attachment 5.

However, in future filings of changes in prices for the Inbound EMS 2 product, the Postal Service should provide a detailed explanation of the penalty calculation in the financial workpapers. This explanation should explicitly link the Postal Service's penalty calculation to its most recent annual PFP Report Card results and the most recent PFP Plan.

*Proposed change to pricing structure.* In its Notice, the Postal Service proposes a new two-tiered pricing system. Notice at 3. Currently, the Postal Service's Inbound EMS 2 pricing structure distinguishes between EMS Cooperative members that participate in PFP and EMS Cooperative members that do not participate in PFP. *Id.* at 4. An EMS Cooperative member that participates in PFP pays Tier 1a prices. If the EMS Cooperative member that participates in PFP also agrees to grant a reciprocal discount from the charges for delivery of U.S.-origin EMS items in its territory, the member pays discounted Tier 1b prices. *Id.* EMS Cooperative members that do not participate in PFP pay Tier 2 prices. *See id.*

Under the new pricing structure, the Postal Service would no longer distinguish between EMS Cooperative members that participate in PFP and those that do not. *Id.* at 5. Rather, it proposes one base price for EMS Cooperative members with which the Postal Service agrees to exchange mail. *Id.* In addition, on a contractual basis, the Postal Service would offer discounted prices below the base price to any foreign postal operator with which it exchanges EMS, regardless of whether the foreign postal operator participates in PFP. *Id.* These discounted prices are subject to a maximum discount. *Id.* at 5-6; *see id.*, Attachment 2.

This simplified pricing structure permits the Postal Service to enter into bilateral agreements with any foreign postal operators in the EMS Cooperative for a variety of business reasons. These business reasons include committed volume levels and to incentivize foreign postal operators to provide advance electronic customs data. Notice at 5. The Commission approves the new pricing structure.

*Request for quarterly reporting relief.* The Postal Service also requests, beginning January 1, 2018, relief from the requirement that it file quarterly updates that

list all countries whose designated postal operators fall within each applicable tier of EMS 2 prices. *Id.* at 8. Additionally, the Postal Service states that because it must file bilateral agreements for discounted EMS prices with the Commission (and Department of State), the Commission would know which foreign postal operators have entered into such agreements with the Postal Service. *Id.* at 6-7; *citing* 39 U.S.C. § 407(d)(2). The Public Representative states that because the Postal Service has demonstrated that, even at the lowest possible prices, the Inbound EMS 2 product should cover cost, specific contract information is not necessary to determine compliance. PR Comments at 4.

The Postal Service provides country specific prices for the Inbound EMS 2 product to the Commission on a yearly basis as part of its annual compliance report. The Commission is able to determine each EMS Cooperative member's pricing tier from this data. In addition, because 39 U.S.C. § 407(d)(2) requires the Postal Service to file commercial or operational bilateral agreements with foreign postal operators with the Commission, the Commission should know which foreign postal operators have entered into bilateral agreements for discounted EMS prices with the Postal Service. Accordingly, the Commission grants the Postal Service's request for relief from its quarterly reporting requirement, as outlined in Order No. 162.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission finds that the proposed Inbound EMS 2 prices, scheduled to take effect January 1, 2018, are in accordance with the relevant statutory and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.
2. The Postal Service shall continue to include in its supporting financial models for all future Inbound EMS 2 prices any Pay-for-Performance penalties incurred in



the last calendar year for which Pay-for-Performance Report Cards are available, even if the effect on cost coverage is small.

3. The Postal Service shall provide a detailed explanation of the penalty calculation in future financial workpapers for changes in prices for Inbound EMS 2. The explanation shall explicitly link the penalty calculation to the most recent annual report card and the most recent Pay-for-Performance Plan.
4. The Commission approves that Postal Service's simplified pricing structure for the Inbound EMS 2 product.
5. The Commission grants the Postal Service's request for relief from filing quarterly reports listing foreign postal operators in each Inbound EMS 2 pricing tier.

By the Commission.

Ruth Ann Abrams  
Acting Secretary